



Mary Hubler

State Representative

March 23, 2010

Hubler Testimony on Assembly Bill 834 –Changes to Comprehensive Planning Law

Assembly Committee on Urban and Local Affairs

Thank you, Chairperson Berceau and committee members for the opportunity to testify on AB 834.

This bill makes no significant changes to the Comprehensive Planning Law. It grants a reasonable extension to communities that have attempted to fulfill their responsibility to adopt a comprehensive plan. It makes other important clarifications to the law.

This bill has the support of 1,000 Friends of Wisconsin, the Wisconsin Realtors Association, the League of Wisconsin Municipalities, the Wisconsin Builders Association, the Wisconsin Counties Association and the Wisconsin Towns Association.

Here, briefly are the provisions in AB 834 that change the Comprehensive Planning Law:

- It delays the consistency requirement for some local governments that applied for but did not receive state planning grants. It also allows communities that received grants but also got extensions from the Department of Administration to complete the plans. The unsuccessful applicants would get until January 1, 2012. The extension negotiated with DOA would be honored.
- It modifies the law to enable but not require towns without village powers to adopt comprehensive plans. Towns without village powers do not have zoning or subdivision ordinances, so the consistency requirement would not apply.
- It clarifies that comprehensive plans are not regulations – comprehensive plans are advisory and do not create regulatory requirements. Confusion has occurred because comprehensive plans are adopted by ordinance and zoning must be consistent with comprehensive plans.
- It defines consistency, which the current law does not do. If not rectified, the lack of a definition will result in litigation.
- It clarifies exactly what actions must be consistent with the comprehensive plan and which parts of the plan these actions must conform with.

- It clarifies that the comprehensive plan will be sent to the local governments it effects. The current law requires that the ordinance adopting the plan must be sent.
- It makes the Comprehensive Planning Law consistent with the subdivision law. Under current law, one of the conditions of approval of plats is that they be in "compliance with" a comprehensive plan. "Compliance with" may be a different legal standard than "consistent with." Zoning and subdivision ordinances are the regulations that must be consistent under the current law. The bill deletes subdivision plats from the list of items that must be consistent with the law.

The Comprehensive Planning Law is an important and complex piece of legislation. The need for changes and clarifications has been made clear during our decade of experience with the law. The proposed extensions are reasonable for communities that have made serious attempts to comply with the law or who apply for necessary extension in an effort to formulate the best plan.

This bill would not grant more time to communities who have received grants and declined to adopt the comprehensive plans that resulted from those grants. It would not aid local governments that have made no move to comply with the law.

The bill does nothing to blunt the real impact of the Comprehensive Planning Law. It makes reasonable changes and grants extensions for a very few local governments that present legitimate cause.

I appreciate your consideration and thanks again for hearing my testimony.



To: Members, Assembly Committee on Urban and Local Affairs
From: Tom Larson, WRA Director of Regulatory & Legislative Affairs
Date: March 22, 2010
Re: AB 834/SB 601 – Changes to Wisconsin's Comprehensive Planning Law

The Wisconsin REALTORS® Association (WRA) strongly supports AB 834/SB 601, legislation intended to some of the major issues related to the implementation of local comprehensive plans. Because the law requires local decisions to be consistent with local comprehensive plans beginning January 1, 2010, these issues will likely result in litigation unless they are resolved through legislation.

To avoid litigation, AB 834/SB 601 makes the following changes to Wisconsin's Comprehensive Planning Law:

1. **Delays consistency requirement for some local governments** – A number of local government are having difficulty meeting the January 1, 2010 deadline, requiring all local zoning regulations to be consistent with their comprehensive plans. Many of these communities have actually applied for, but did not receive, state planning grants. Other communities have received state planning grants but also received time extensions from DOA to complete their comprehensive plans.
 - a. Section 11 – Delays the January 1, 2010 consistency deadline until either January 1, 2012 or the date agreed to by DOA for any community that has (a) applied for, but has not received, a comprehensive planning grant from DOA, or (b) received a comprehensive planning grant and an extension of time to complete it by DOA.
 - b. Sections 1, 2, 4, and 5 – Makes reference to this delay authorization in other parts of the statutes
2. **Towns Without Village Powers:** Modify the comprehensive planning law to enable, but not require, towns without village powers to adopt comprehensive plans. Because towns without village powers do not have zoning or subdivision ordinances, there would be no consistency requirement applicable to these comprehensive plans.
 - a. Section 3 – Authorizes towns without village powers to adopt or amend comprehensive plans
 - b. Section 7 – Deletes "that exercises village powers under 60.22(3)" from 66.1001(1)(a)(2)
3. **Clarify that Comprehensive Plans Are Not Regulations** – Clarify comprehensive plans are advisory in nature and do not create regulatory requirements independent from other requirements. Some confusion has resulted by the fact that comprehensive plans must be adopted by ordinance and that zoning regulations have to be consistent with comprehensive plans.
 - a. Section 6 – Defines "comprehensive plan" to mean—"a guide to the physical, social, and economic development of a local governmental unit."

- b. Section 9 – Adds “The enactment of the comprehensive plan by ordinance does not make a comprehensive plan by itself a regulation.”
- 4. **Define “consistency”** – Under the law, all zoning and subdivision regulations must be consistent with a comprehensive plan. However, “consistency” is not defined. As a result, considerable litigation will likely occur to define the meaning of the consistency, which will create tremendous uncertainty for local communities and property owners trying to use their property in accordance with the comprehensive plan.
 - a. Section 8 – Defines “consistent with” to mean “furthers or does not contradict the objectives, goals and policies contained in the comprehensive plan.”
- 5. **Clarify what must be consistent with the comprehensive plan** – Under current law, confusion exists as to what actions must be consistent with the comprehensive plan and with which parts of the plan these actions must be consistent. For example, if a community makes a zoning change, it is unclear whether the zoning change has to be consistent with the land use map, the housing element, the economic development element, or every word of every section of the plan. Because plans are supposed to be visionary, rather than regulatory, in nature, this could present tremendous confusion.
 - a. Section 10 -- Clarifies that only the ordinances have to be consistent with the comprehensive plan.
- 6. **Clarifies what must be sent to affected government entities.** Current law indicates that the ordinance adopting the comprehensive plan must be sent to the various government entities identified in the law after the ordinance is enacted. However, the intent of the original bill was to have the plan itself sent to these entities.
 - a. Section 12 -- Replaces “an ordinance” with “one copy of the comprehensive plan. (Wis. Stat. § 66.1001(4))
- 7. **Consistency with Subdivision Law** – Under current subdivision law (Wis. Stat. Ch. 236), approval of plats must be conditioned upon, among other things, “compliance with” a comprehensive plan. “Compliance with” is possibly a different legal standard than “consistent with” and could result in confusion. Moreover, because zoning and subdivision ordinances are the regulations that must be consistent with a comprehensive plan (see above) under the comprehensive planning law, references to the comprehensive plan should be deleted to avoid confusion.
 - a. Section 13 -- Deletes reference to the comprehensive plan from the list of items with which subdivision plats must be consistent (Wis. Stat. § 236.13(1)(c)) (Note – deleting this reference does not mean that subdivision plats no longer have to be consistent with the comprehensive plan. It means that subdivision ordinances/regulations have to be consistent with the comprehensive plan (See Section 10 of the AB 834/SB 601) and the subdivision plats have to be consistent with the subdivision regulations.)

We respectfully request your support for AB 834/SB 601. If you have questions, please contact us at (608) 241-2047.